

**BRIAN PATRICK SPENSER** )  
**PERCEVAL,** )  
) )  
**Petitioner,** )  
) )  
**vs.** )  
) )  
**UNITED STATES OF** )  
**AMERICA,** )  
) )  
**Respondent.**<sup>1</sup> )

**Case No. CIV-13-914-D**

Petitioner filed a “Petition for a Writ of Error Coram Nobis” and United States District Judge Timothy D. DeGiusti referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B), (C). The undersigned has examined the petition and recommends that it be dismissed as duplicative.

Petitioner was convicted in this Court, in Case No. CR-85-206, and on August 20, 2013, he filed a “Petition for a Writ of Error Coram Nobis” in that case. CR-85-206-D, Doc. 81. Six days later, Petitioner initiated this action, filing the identical “Petition for a Writ of Error Coram Nobis.” Doc. 1. On

As noted below, Petitioner's petition is a duplicate of the one he filed in his original criminal action, and as such it is styled to reflect the United States of America as the initiating party. Doc. 1. The undersigned has restyled the instant action to reflect that Petitioner initiated the case.

October 30, 2013, this Court entered a lengthy order in Case No. CR-85-206, denying Petitioner's writ of coram nobis on the merits. CR-85-206-D, Doc. 84, at 1-6.

## **II. Analysis.**

“The rule against claim-splitting requires a [litigant] to assert all of [his] causes of action arising from a common set of facts in one lawsuit.” *Katz v. Gerardi*, 655 F.3d 1212, 1217 (10th Cir. 2011). To that end, “[d]istrict courts have discretion to control their dockets by dismissing duplicative cases.” *Id.* (citation omitted). The Court has already addressed Petitioner's petition on the merits, and should therefore dismiss this duplicative action. *See, e.g., Davis v. Bacon*, 234 F. App'x. 872, 874 (10th Cir. 2007) (dismissing plaintiff's action because “the current suit substantially mirrors the prior complaint”); *Hemphill v. Jones*, No. CIV-09-0475-HE, 2009 WL 1531763, at \*1-2 (W.D. Okla. June 1, 2009) (unpublished order) (adopting the magistrate judge's recommendation to dismiss petitioner's petition on grounds that it was “essentially duplicative of [an] already-pending . . . action.”).

## **III. Recommendation and notice of right to object.**

For the foregoing reasons, the undersigned recommends that the Court dismiss Petitioner's “Petition for a Writ of Error Coram Nobis” as duplicative.

Adoption of this recommendation will moot Petitioner's motion for leave to proceed in forma pauperis, Doc. 2.

Petitioner is advised of his right to file an objection to this report and recommendation with the Clerk of this Court by February 20, 2014, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. Petitioner is further advised that failure to timely object to this report and recommendation waives the right to appellate review of both factual and legal issues contained herein. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

The Clerk of the Court is instructed to electronically forward a copy of this report and recommendation to the United States Attorney for Western District of Oklahoma.

This report and recommendation disposes of all issues referred to the undersigned Magistrate Judge in this matter.

ENTERED this 30th day of January, 2014.

  
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SUZANNE MITCHELL  
UNITED STATES MAGISTRATE JUDGE